

## **REMARKS**

Applicants respectfully request entry and consideration of the following remarks even though presented after a final rejection. Applicants submit that the remarks do not raise new issues or require a new search. Further, entry and consideration of the remarks may isolate issues for potential allowance or appeal. The remarks were not presented earlier in the prosecution as new grounds of rejection have been advanced in the latest Office Action.

### **Summary**

Claims 1-35 are pending in this application. No new matter has been added. Favorable reconsideration and allowance of the pending claims are respectfully requested.

### **Office Action Deficiencies**

Applicants respectfully submit that the Office Action mailed on March 19, 2008 contains deficiencies rendering the Office Action unclear and ineffective. For example, at page 9 the Office Action states, regarding claims 15, 16 and 17, that “Tam et al. fails to explicitly disclose third party comprising a charitable or nonprofit entity, political action committee, fundraising entity.” Claims 15, 16 and 17, however, depend from independent claim 13 that stands rejected under US 6,920,429 to Barni, et al. (“Barni”) in view of US 2002/0133445 to Lessin (“Lessin”). Applicants respectfully submit that the above cited language referencing Tam and failing to reference Barni and Lessin renders the rejection of dependent claims 15, 16 and 17, additionally rejected on page 8 in view of Barni, Lessin and US 6,496,809 to Nakfoor (“Nakfoor”), unclear.

Furthermore, Applicants submit that the rejection of claims 18 and 19 at page 10, paragraph 11 of the Office Action over Nakfoor in view of US 5,987,429 to Maritzen, et al. (“Maritzen”) is also unclear. Claims 18 and 19 depend from claim 13 that, as recited above, is rejected over Barni and Lessin. Applicants submit that claims 18 and 19 include each and every element recited in independent claim 13 based on their dependency. Furthermore, Nakfoor and Maritzen, taken alone or in combination, fail to

teach, suggest or disclose each and every element recited in claim 13 and claims 18 and 19 that depend from claim 13 and contain additional features. Applicants submit, therefore, that the rejection with respect to dependent claims 18 and 19 is unclear.

As stated above, Applicants submit that the Office Action mailed on March 19, 2008 contains deficiencies rendering the Office Action unclear and ineffective. Consequently, a new non-final office action is respectfully requested.

### **35 U.S.C. § 103(a) Rejections**

Claims 1-4, 6-7, 9-10, 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Barni in view of Lessin.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Barni in view of Lessin and further in view of Maritzen.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Barni and Lessin and further in view of US 2002/0152130 to Salls (“Salls”).

Claims 11, 14-17 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Barni and Lessin and further in view of Nakfoor.

Claims 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakfoor and further in view of Maritzen.

Claims 21-22 and 29-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salls in view of Lessin.

Claims 23-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salls and Lessin and further in view of Nakfoor.

Claims 33-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salls and Lessin and further in view of US 2002/0133445 to Petras, et al. (“Petras”).

Applicants respectfully traverse these rejections, and request reconsideration and withdrawal of the obviousness rejections.

While Applicants submit that the Office Action contains deficiencies rendering it unclear and ineffective, as recited above, Applicants have addressed the cited references below based on a presumed understanding of the intended rejections to expedite prosecution on the merits.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicants respectfully submit that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-35. Therefore claims 1-35 define over the cited references whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

the seller interface includes one or more options to donate  
at least a portion of funds received in exchange for the one  
or more goods; and

... transferring the portion of the funds for donation  
according to an option selection of the seller to a third party  
designated by the seller....

According to the Office Action, the missing language is disclosed by Lessin at paragraph [0019]. Applicant respectfully disagrees.

Applicants respectfully submit that Lessin fails to disclose the missing language of the claimed subject matter. For example, Lessin at the given cite, in relevant part, states:

Moreover, the present invention provides for contributors  
setting the parameters for which they will donate the  
money. Such parameters may include...

if the funding request is for a business, that the Applicant

insure that a percentage of the business profits pay for a specific item (e.g., a percentage of the profits be donated to charity, and the like).

By way of contrast, the claimed subject matter teaches “the seller interface includes one or more options to donate at least a portion of funds received in exchange for the one or more goods; and... transferring the portion of the funds for donation according to an option selection of the seller to a third party designated by the seller...” Applicants submit that this is clearly different than the above recited teaching of Lessin.

Applicants respectfully submit that Lessin, arguably, teaches a marketplace for the development and reward of human potential in which an Applicant can market their ideas and Contributors can donate money to the Applicants for the pursuit of their ideas. More particularly, Lessin teaches that Contributors can select the conditions under which they will donate money, one such condition being that the Applicant will donate a percentage of the profits generated from the pursuit of their idea to a charity. Applicants respectfully submit that this is clearly different than the above recited language of independent claim 1.

Claim 1 states that the portion of the funds for donation is transferred according to an option selection of the seller to a third party designated by the seller. In contrast, Lessin arguably teaches that the selection regarding the desired distribution of funds is made by the Contributor, or the person paying for the service in the case of Lessin. Furthermore, Applicants submit that donating profits for a service to be rendered in the future, as taught by Lessin, is different than donating funds received from goods that have already been sold as recited in claim 1. Consequently, Applicants submit that Lessin fails to teach, each and every element recited in claim 1.

Applicants respectfully submit that they have been unable to locate at least the above recited language of claim 1 in the teaching of Lessin. Furthermore, Applicants submit that Barni, Maritzen, Salls, Nakfoor and Petras also fail to teach, suggest or disclose at least the above recited language of claim 1. Therefore, the cited references, taken alone or in combination, fail to disclose, teach or suggest the missing language.

For at least these reasons, Applicants submit that claim 1 is patentable over the cited references, whether taken alone or in combination. In addition, claims 13 and 21 recite features similar to those recited in claim 1. Therefore, Applicants respectfully submit that claims 13 and 21 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 1.

Accordingly, Applicants respectfully request removal of the obviousness rejection with respect to claims 1, 13 and 21. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Therefore, Applicants respectfully request withdrawal of the obviousness rejection with respect to claims 2-12, 14-20 and 22-35 that depend from claims 1, 13 and 21 respectively, and contain additional features that further distinguish these claims from the cited references.

For at least the above reasons, Applicants submit that claims 1-35 recite novel features not shown by the cited references. Further, Applicants submit that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicants submit that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicants do not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicants hereby reserve the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

### **Conclusion**

For at least the reasons set forth above, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejections of claims 1-35 and a timely Notice of Allowance to this effect.

Applicants respectfully request entry of this Response after final at least because:

- (i) the arguments clearly demonstrate that the case is in condition for allowance and/or
- (ii) the arguments place the case in better form and simplify the issues for appeal.

In the event that the Examiner does not believe that this case is in condition for allowance, Applicants respectfully request entry of this Response after final at least because the arguments place the case in better form for appeal.

Applicants respectfully direct the Examiner to MPEP § 714.13 and remind the Examiner that the refusal to enter a response should not be arbitrary. Rather, the response should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the credit card in the previously filed credit card authorization form.

Respectfully submitted,

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Robert V. Racunas, Reg. No. 43,027  
Under 37 CFR 1.34(a)

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